

The opinion in support of the decision being entered today was *not* written for publication in and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID WILKINS, JOHN NICHOLS, JIM FREDRICKS and KEITH
KETCHER

Appeal 2006-3140
Application 09/560,665
Technology Center 3600

Decided: February 28, 2007

Before ANITA PELLMAN GROSS, JENNIFER D. BAHR and ANTON W.
FETTING, *Administrative Patent Judges*.

ANTON W. FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1, 2, 4-7, 9-12, 14 and 15, the only claims pending in this application. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 134.

We REVERSE and ENTER A NEW GROUND OF REJECTION
PURSUANT TO 37 CFR § 41.50(b).

BACKGROUND

The appellants invented an eChild Support Enforcement intention-based, interactive web application that allows parents and employers to exchange information that previously was handled on the phone or in person with state agency staff (Specification 6). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A method for providing a network-based child financial support framework for facilitating communications between employers, custodial parents, and non-custodial parents, comprising the steps of:
 - (a) maintaining a database including information on a received financial support payment utilizing a network;
 - (b) providing general information relating to the financial support payment utilizing the network;
 - (c) calculating a proper amount of the financial support payment based on a profile of a user and based on an amount paid to date from a non-custodial parent to a custodial parent, wherein the profile includes data relating to at least one of income, number of children, basic support, insurance premium, child care cost, and additional expenses, wherein a first portion of the profile is received from the user across the network and a second portion of the profile is received from the database, and wherein the user may change the data in the second portion of the profile; and
 - (d) displaying a history associated with the financial support payment.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations that follow.

Claims 1, 2, 4-7, 9-12, 14 and 15 rejected under 35 U.S.C. § 103(a) as obvious over Polk and Single Parent Central.

We note that the appellants argue these claims as a group. Accordingly, we select claim 1 as representative of the group.

The issues under contention are

- Whether the art calculates a proper amount of the financial support payment based on a profile of a user and based on an amount paid to date from a non-custodial parent to a custodial parent;
- Whether the profile includes data relating to at least one of income, number of children, basic support, insurance premium, child care cost, and additional expenses;
- Whether a first portion of the profile is received from the user across the network and a second portion of the profile is received from the database; and
- Whether the user may change the data in the second portion of the profile.

In particular, the appellants contend that neither reference shows using the amount paid to date in computing a proper child support payment, that no user

profile is shown and that neither reference shows combining two user profiles, that a bank rather than a user sends data, and that any data in a database in the applied art is changed by a bank and not the user.

FACTS PERTINENT TO THE ISSUES

Polk describes integrating the collection of child support payments and disbursement information by an employer and transmitting the information to an accumulator agency (Col. 4, Lines 60-63).

Polk describes the data sent by the employer in Figs. 9, which includes an application identifier, a case identifier, a pay date, a payment amount, a non-custodial parent social security number and name, and a medical support indicator.

An application identifier, a case identifier, a pay date, a payment amount, a non-custodial parent social security number and name, and a medical support indicator are each elements of a profile describing a user, or a user profile.

Although the data is sent by the equipment of the employer, it is at the direction of the non-custodial parent (and presumably a court order), and is therefore sent by the user. The user's reliance on an intermediary does not eliminate the user's role in sending the data.

Polk describes data stored in a database at the collector, which maintains a database of payment and disbursement information pursuant to each initiator (Col. 5, Lines 10-14).

A database of user payments provides a profile of payments by that user and is therefore also a user profile.

Therefore Polk describes a user profile that is part received from the user across the network and part received from a database.

Polk shows that data containing information such as that in Figs. 8 and 9, contained in one or more of its databases 522 and 524, may be periodically updated from collectors (Col. 9, Lines 57-67).

As shown above, some of the data originates from the user via the employer, and therefore such updating is by the user.

Therefore, Polk describes the user changing the data in the database portion of the profile.

As stated above, Polk's data in Figs. 9 includes a payment amount and a medical support indicator. A payment amount relates to income, number of children, basic support, insurance premium, child care cost, and additional expenses. A medical support indicator relates to an insurance premium.

Therefore, Polk describes a user profile that includes data relating to at least one of income, number of children, basic support, insurance premium, child care cost, and additional expenses.

Polk describes computing a payment due the recipient (custodial parent) (Col. 18, Lines 50-57).

Polk makes no reference to amounts paid to date.

Single Parent makes no reference to amounts paid to date.

Although the examiner suggests that the alimony fields in Single Parent are amounts paid to date, there is no description in Single Parent suggesting this.

ANALYSIS

The above facts demonstrate that Polk describes a user profile that is part received from the user across the network and part received from a database; Polk describes the user changing the data in the database portion of the profile; and Polk describes a user profile that includes data relating to at least one of income, number of children, basic support, insurance premium, child care cost, and additional expenses.

Neither reference describes calculating a proper amount of the financial support payment based on an amount paid to date from a non-custodial parent to a custodial parent.

Therefore, because this element is in each of the independent claims, the art applied does not describe every limitation of the claimed subject matter.

Accordingly we do not sustain the examiner's rejection of claims 1, 2, 4-7, 9-12, 14 and 15 under 35 U.S.C. § 103(a) as obvious over Polk and Single Parent Central.

NEW GROUND OF REJECTION UNDER 37 CFR § 41.50(b)

Pursuant to 37 CFR § 41.50(b), we enter the following new ground of rejection:

Claims 1, 2, 4-7, 9-12, 14 and 15 are rejected under 35 U.S.C. § 103 as obvious over Polk and the portions of the United States Code governing child support payments, particularly 42 U.S.C. §666(b) and 15 U.S.C. §1673(b).

The above findings of fact show that Polk describes all of the limitations of the claimed subject matter except for calculating a proper amount of the financial

support payment based on an amount paid to date from a non-custodial parent to a custodial parent.

42 U.S.C. §666(b)(1) states

In the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's income must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 1673(b) of title 15. *If there are arrearages to be collected, amounts withheld to satisfy such arrearages*, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 1673(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages. (emphasis added).

Therefore, in Polk's calculations of amounts due the recipient, arrearages² must be considered to comply with federal law. Further, 15 U.S.C. §1673(b)(2) referred to by this section, states

The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed--

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such *individual's disposable earnings* for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such

² Something unpaid and overdue (Merriam Webster On-Line <http://www.m-w.com/cgi-bin/dictionary>)

individual's disposable earnings for that week; . . . (emphasis added).

Therefore, in Polk's calculations of amounts due the recipient, user profile information must relate to disposable earnings, because disposable earnings must be computed to determine the limits of the amount that may be garnished for child support payments. Thus the user profile information inherently relates to income, number of children, basic support, insurance premium, child care cost, and additional expenses, because each of them is either a source of or deduction from disposable earnings.

It would have been obvious to a person of ordinary skill in the art to have incorporated these portions of the federal code into the calculations taught by Polk for the purpose of complying with federal law. The enforcement authority of the federal government is motivation for compliance with the requirements found in the applicable statutes, which are part of the relevant art.

DECISION

To summarize,

- The rejection of claims 1, 2, 4-7, 9-12, 14 and 15 under 35 U.S.C. § 103(a) as obvious over Polk and Single Parent Central is not sustained.
- Pursuant to 37 CFR § 41.50(b), we enter the following new ground of rejection
 - Claims 1, 2, 4-7, 9-12, 14 and 15 are rejected under 35 U.S.C. § 103 as obvious over Polk and the portions of the United States Code governing child support payments, particularly 42 U.S.C. §666(b) and 15 U.S.C. §1673(b).

This decision contains a new ground of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 CFR § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 CFR § 41.50 (b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims: (1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

Appeal Number: 2006-3140
Application Number: 09/560,665

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